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mitted improper evidence to go before the jury upon the issue of negligence. On the new trial, plaintiff recovered \$10,000 damages, but this time a new error was committed in admitting proof of plaintiff's illness and that of her children, after the husband's death, though such illness was in no way connected with that fact. Instead of reversing the case, upon the second appeal, because of this error, the court concluded that the difference between the verdict on the first trial and that on the second was, in all probability, brought about by the improper testimony adduced at the second trial. They accordingly directed that the judgment be affirmed, if the appellant would waive \$3000 of the verdict.

Doubtless, technical niceties could be urged against the Court's method of estimating the money value of an error in law; it might be said, for example, that the principle cannot be sound logically, for what could the court have done, had the second recovery been smaller than the first? The law does not exist, however, for the sole purpose of satisfying logic, but rather as a social need. With all its refinements of artificial reason, it must retain in its most civilized form a certain amount of the rude justice that marked the primitive popular assembly. "In large part, justice without law reconquers from time to time a legitimate field from which law cannot wholly exclude it. It is, therefore, a mistaken ideal that conceives of the ultimate reduction of everything to rule."² "In dealing with litigation courts are not engaged in an academic exercise. With them the search for truth is not the main matter; their desire to know this and their ability to use it, are limited by the requirements of their main business, namely, that of awarding justice."³

O. K. M.

Constitutional Law: Employers' Liability for Injuries: Insurance Contracts.—The Employees' Accident Compensation Act of Nevada embodies a clause which provides that no contract of employment, insurance, relief benefit or indemnity for injury or death shall constitute a bar or defense to an action brought to recover damages for personal injuries or death of such employee. Against the contention that this statute was an interference with the liberty of contract, its constitutionality has been affirmed by the Nevada Supreme Court.¹

The right to contract is a property right, and as such is protected by the Fourteenth Amendment.² Though this fact be admitted, the police power of the state, however, may be used to forbid certain contracts which are obnoxious to the public welfare,—for example, agreements in restraint of trade, gambling contracts, and contracts by which usury may be exacted. Whether a contract such as the Nevada statute aims

² Professor Roscoe Pound in *Columbia Law Review* for December, 1913 (Vol. XIII, p. 708.)

³ Thayer, *Preliminary Treatise on Evidence*, p. 271.

¹ *Lawson v. Halifax Tonopah Mining Co.*, (Oct. 1, 1913) (Nevada) 135 Pac. 611.

² Brannon on *The Fourteenth Amendment*, p. 110.

to forbid, should be classed with these is a question concerning which the authorities have not always been in harmony. A New York law forbidding the employment of bakers for more than ten hours per day was declared unconstitutional on the ground of its interference with the right to contract.³ A Massachusetts statute forbidding contracts by which the employer could withhold part of the employee's wages for imperfections in his work was similarly declared void.⁴ An Illinois law which specified how coal miners' wages should be determined was decided to be unconstitutional.⁵ Perhaps it should be said that in the United States Supreme Court decision and the Massachusetts decision there were dissenting opinions.

The Nevada statute is only one of the many laws which are being enacted by all legislative bodies, in the present age, with the purpose of preventing the oppression of the laboring classes. It is true that the consent of the only person, whom the contract would affect adversely, has been obtained. The consent, however, is only apparent; it is not real. Labor conditions too often compel the workingman to accept employment under such conditions as are offered, and the hand may sign a contract against which the heart rebels. The Nevada statute forbids only such a contract as the common dictates of humanity would condemn, and such a contract certainly ought not to be protected by the Federal Constitution.

The decision is in line with two recent decisions by the United States Supreme Court, one holding that Congress has a right to forbid such contracts, when interstate commerce is concerned,⁶ the other upholding the constitutionality of an Iowa statute which forbids contracts limiting liability for injury to an employee, when such contracts are made before the injury is received.⁷ The sort of contract against which the Nevada statute is aimed, if anything, is more pernicious, since it would permit an injured laborer to contract away a matured cause of action for an insignificant consideration.

The legislature being familiar with local conditions is primarily the judge of the necessity of such enactments.⁸

C. H. T. Jr.

Constitutional Law: Imprisonment for a Civil Debt.—Apparently in the face of a well established legal principle, the Supreme Court of Utah, in *State v. Reese*,¹ has recently declared imprisonment in bastardy proceedings to be a violation of the constitutional provision prohibiting imprisonment for a civil debt. The Utah statute provides for an imprisonment of at least one year in case the putative father fails to provide the security required by judgment for the support

³ *Lochner v. New York*, (1905) 198 U. S. 45, 25 S. C. Rep. 539.

⁴ *Commonwealth v. Perry*, (1891) 155 Mass. 117, 28 N. E. 1126.

⁵ *Harding v. People*, (1896) 160 Ill. 459, 43 N. E. 624.

⁶ *Second Employers' Liability Cases*, (1912) 223 U. S. 1, 32 S. C. Rep. 169.

⁷ *C. B. & Q. Co. v. McGuire*, (1910) 219 U. S. 549, 31 S. C. Rep. 259.

⁸ *McLean v. Arkansas*, (1909) 211 U. S. 539, 547, 29 S. C. Rep. 206.

¹ (1913) 135 Pac. 270.